

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 31, 2002**

**IN RE:**

**RULEMAKING PROCEEDING –  
REGULATIONS FOR TERM ARRANGEMENTS  
FOR TELECOMMUNICATIONS SERVICES**

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**DOCKET NO.  
00-00702**

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**REPORT AND RECOMMENDATION OF PRE-HEARING OFFICER**

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From the inception of the Tennessee Regulatory Authority ("Authority"), Contract Service Arrangements or CSAs have been the subject of almost continuous evaluation by the Authority. Since that time, the Authority has taken action in the form of: 1) convening a contested case proceeding on July 7, 1998 addressing CSAs filed by BellSouth Telecommunications, Inc. ("BellSouth");<sup>1</sup> 2) conducting a contested case hearing and deliberating findings in two CSA dockets;<sup>2</sup> 3) initiating a Show Cause proceeding on July 13, 1999 which was closed on October 4, 2000;<sup>3</sup> and 4) commencing a rulemaking proceeding on September 11, 2000 which resulted in proposed rules being approved by the Authority and submitted to the Attorney General in May of 2001. More recently, since September 2000, the Industry parties have been participating in the rulemaking process under Docket Number 00-00702. During those 27 months, over 53 filings have been submitted and hundreds of hours of

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<sup>1</sup> *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications Inc.*, TRA Docket No. 98-00559.

<sup>2</sup> *BellSouth Telecommunications, Inc. Tariff to Offer Contract Service Arrangement TN 98-6766-00 for Maximum 13% Discount on Eligible Tariffed Services*, TRA Docket No. 99-00210 and *BellSouth Telecommunications, Inc. Tariff to Offer contract Service Arrangement KY 98-4958-00 for an 11% Discount on Various Services*, TRA Docket No. 99-00244.

<sup>3</sup> *Petition to Require BellSouth Telecommunications, Inc. to Appear and Show Cause that Certain Sections of Its General Subscriber Services Tariff and Private Line Services Tariff Do Not Violate Current State and Federal Law*, TRA Docket No. 01-00170.

meetings, settlement negotiations, and hearings have occurred. During this period of time, hundreds of CSAs have been reviewed by the Authority Staff, with a vast majority of these being uncontested or no intervention being sought. Also during this time, the Authority has evaluated and deliberated hundreds of CSAs and tariffs involving issues related to CSAs. Each CSA has been subjected to an established review process by Authority Staff as reflected in deliberations and orders approving various CSAs.

On May 31, 2002, Attorney General Summers sent a 6 page letter to Authority advising that he was returning as disapproved the TRA's proposed "CSA Rules," Chapter 1200-4-2. The letter stated that two of the proposed rules, 1220-4-2-.59(6)(a) and 1220-4-8-.07(3)(a), violate the Public Records Act, and therefore, pursuant to Tenn. Code Ann. § 4-5-211, the legality of those rules could not be approved.<sup>4</sup> While acknowledging that the Authority has "considerable discretion in fulfilling its broad mandate," the Attorney General's letter expressed concern as to whether special contracts are justified by special conditions. The letter also requested some assurance that the Authority has a "mechanism to ensure that special rates are, in practice, made readily available to other similarly-situated customers."

Fifty-one CSAs were before the Authority at a Conference held on June 11, 2002. As a result of the statements in the Attorney General's letter of May 31, 2002, action on those CSAs was suspended. Also, during the June 11, 2002 Authority Conference, members of the industry/public were invited to file comments on the issues raised by General Summers' letter. On June 13, 2002, BellSouth and Time Warner Telecom of the Mid-South, L.P. ("Time Warner") filed comments.

On the Agenda for the August 5, 2002, Authority Conference there were seventy-one (71) CSA

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<sup>4</sup> The letter also stated that the definitions of "Affiliate" and "Revenue Price-out" were "unclear and should be reworded."

for consideration by three voting panels.<sup>5</sup> All but one CSA were BellSouth CSAs. All seventy (70) BellSouth CSAs had been suspended for sixty (60) days by the former Directors of the Authority during a Conference held on June 18, 2002. These 70 CSAs were suspended as a result of the rejection of the proposed CSA rules and the concerns expressed in the Attorney General's May 31, 2002 letter.

On August 2, 2002, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Complaint and Petition to Intervene* in all 70 BellSouth CSA dockets on the August 5, 2002, Conference. The Complaint and Petition was based, in part, on many of the concerns raised in the Attorney General's May 31, 2002 letter. At the August 5, 2002 Conference, BellSouth and the Consumer Advocate announced that they had reached an agreement whereby the Consumer Advocate agreed to allow the CSAs to go into effect and BellSouth agreed not to oppose the Consumer Advocate's Petition. Under their agreement, the Consumer Advocate could pursue its concerns through a contested case hearing. The Authority could allow the CSAs to go into effect pending the outcome of the hearing so that the customers would receive the benefit of the discounts in the CSAs. A determination would be made later, after a hearing, as to whether or not the CSAs would be approved and remain in effect or be disapproved.

The oral agreement between BellSouth and the Consumer Advocate, however, did not address all of the concerns raised by the Attorney General in his May 31, 2002 letter. As a result, the Directors permitted General Counsel time to explore these concerns with the parties and to discuss this proposed agreement with the advisory section of the Attorney General's office.

Following several meetings between the parties and General Counsel, the parties presented a letter on August 7, 2002, to the Directors which reflected the terms of the agreement between the

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<sup>5</sup> After July 1, 2002, pursuant to the new docket assignment process, panels of three were randomly selected and assigned to panels which were then assigned to these CSA dockets. Because the Chairman heard matters involving these 71 CSA dockets prior to July 1, 2002, the Chairman was assigned to all panels deliberating on these CSAs. Thus, while all four Directors would be deliberating on various CSAs depending upon the assignment of these dockets to the panels, these CSA dockets were assigned to only the three voting panels of which Chairman Kyle is a member.

Consumer Advocate's office and the representatives of BellSouth. The letter incorporated the oral agreement presented by BellSouth and the Consumer Advocate at the August 5, 2002 Conference and included an agreement that each CSA customer would be notified that the effectiveness of the CSA would be contingent upon the action of the Authority. The text of the notification letter would be submitted to the Authority for prior approval. Copies of all customer notification letters sent to CSA customers would be filed with the Authority in their respective dockets so that the Authority would have a record of each customer notification.

Based on the action taken by the Directors at the August 7, 2002 Conference, the Authority agreed to move forward with the rulemaking docket with all four Directors. The contested case hearing requested by the Consumer Advocate would be incorporated in the rulemaking proceeding. In that contested case hearing, parties in the rulemaking docket would be able to present witnesses and cross-examine parties' witnesses, with the hearing being open to the public to participate.

At the Conference on August 7, 2002, the Directors voted to recommence the rulemaking proceeding to develop criteria for CSA rules that would address the concerns expressed by the Attorney General. After the criteria is determined, the individual CSAs that have gone into effect will be examined as to whether or not each met that criteria.

On August 19, 2002, the Directors appointed Director Deborah Taylor Tate as Pre-Hearing Officer to prepare the issues and procedural schedule for the rulemaking before all four Directors. On August 20, 2002, BellSouth submitted a proposed customer notification letter for approval. The Pre-Hearing Officer proposed a procedural schedule, subject to comments and scheduled a Pre-Hearing Conference for September 9, 2002. During the Conference, the Pre-Hearing Officer addressed two matters that remained outstanding: BellSouth's customer notification letter and the filing of CSA customer names and addresses. Without objection, the Pre-Hearing Officer approved the proposed

customer notification letter and directed BellSouth to file the names of CSA customers. The Pre-Hearing Officer issued an Order on September 13, 2002, reflecting the rulings at the Conference. In compliance with the Order, BellSouth has continually filed copies of letters it has sent to CSA customers. BellSouth has also filed the names and addresses of its CSA customers.

In advance of that Conference, a *Joint Statement in Response to the Notice of Filing and Pre-Hearing Conference* was filed by BellSouth, the Consumer Advocate, Time Warner, AT&T of the South Central States, Inc. and Southeastern Competitive Carriers Association ("SECCA"). In the *Joint Statement*, the parties proposed that they be permitted to engage in "confidential settlement meetings." These meetings would conclude by October 15, 2002, with a report to be filed with the Authority by October 21, 2002. In response to the request, the Pre-Hearing Officer did not establish a procedural schedule but directed the parties to file status reports every two weeks outlining the progress of the settlement discussions. Status reports were filed on September 24, 2002, October 9, 2002 and October 21, 2002. The October 21, 2002 report filed by BellSouth stated that no settlement had been reached and proposed a schedule for discovery and testimony to culminate in a hearing on or about December 9, 2002. On November 8, 2002, the parties requested additional time to meet in settlement negotiations. During this time, the Pre-Hearing Officer held meetings with the parties and other interested entities, including CLECs which traditionally have not had the resources to be involved with rulemaking proceedings.

On November 25, 2002, the Pre-Hearing Officer held a Status Conference and thanked the parties for their good faith efforts toward reaching a settlement (including many productive conversations discussing other remedies and creative solutions in addition to rules). However, with no settlement, the Pre-Hearing Officer closed the time period for settlement negotiations. In light of the positions being taken during the settlement negotiations, the Pre-Hearing Officer determined that the parties should file written comments (initial and reply) to the following questions:

1. Should new CSA rules be proposed for the continued review and approval of CSAs? Is the current rule sufficient for this purpose? Please explain your response.
2. If a proposed CSA rule is necessary, please provide comments, including the general parameters for each proposed rule and justification for each.
3. If the current rule is sufficient, discuss the manner in which future CSAs should be addressed.<sup>6</sup>

The parties agreed to a filing schedule whereby initial comments were filed on December 5, 2002 and reply comments were filed on December 19, 2002. The parties also agreed that oral remarks would be presented to all four Directors during the second Authority Conference in January, 2003. The Attorney General/Consumer Advocate filed Comments on December 5, 2002, and Reply to Industry Comments on December 19, 2002, all in support of the necessity for the adoption of new rules regarding the review of CSAs by the TRA. On December 10, 2002, the Consumer Advocate submitted "Proposed Regulations for Special Contracts." On December 5, 2002, BellSouth filed Industry Comments supporting the present rule and review by the TRA. Joint Reply Comments were filed on December 19, 2002.

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<sup>6</sup> **Current Authority Rules Governing CSAs**

**TRA Rule 1220-4-1-.07** governs the Authority's consideration of ILEC CSAs:

Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Commission. A copy of such special agreements shall be filed, subject to review and approval.


**TRA Rule 1220-4-8-.07(3)** governs the Authority's consideration of CLEC CSAs:

- (3) Special Contract Provisions
  - (a) Special contracts and any tariffs for interconnection services shall comply with the provisions of Rule 1220-4-8-.10.
  - (b) Special contracts with end users which are not unduly discriminatory shall be permitted. However, the Commission shall be notified of the existence of the contract upon execution, and shall be provided with a written summary of the contract provisions including a description of the services provided. The Commission shall make a copy of the summary available for inspection by any interested party. A copy of the contract shall be made available for Commission review upon request.
  - (c) Any special pricing package, contract, or discount shall be made available to any similarly situated customer satisfying the required terms and conditions of the special agreement upon request.

**Recommendations**

Based upon the foregoing, the Pre-Hearing Officer **recommends that** (1) all four Directors hear the oral presentations by the parties during the regularly scheduled Authority Conference on January 27, 2003 and (2) the Pre-Hearing Officer be relieved of further duties as a Pre-Hearing Officer in this docket.

Respectfully submitted,

  
DIRECTOR DEBORAH TAYLOR TATE  
ACTING AS PRE-HEARING OFFICER